Indian Independence League. His evidence, which was not shaken in cross-examination, was that he had then been accused by Kampeitai officials of "non-co-operation." This is a word the meaning of which is only too well understood by those who had dealings with the Japanese occupation authorities. It would cover anything from armed resistance downwards. If it was used seriously by the Kampeitai, they were thinking in terms of capital punishment. There is no doubt that, if they had been satisfied that the appellant had been guilty of non-co-operation to any substantial extent, he would not have been alive to bring this appeal. This has a very real importance in connection with what occurred after the Custodian made his first demand for payment.

The evidence of the appellant, which again is uncontradicted and unshaken, is that the Custodian's officer in an interview with him said that, if he did not immediately take steps to discharge the debt, he would be considered guilty of non-co-operation. The effect of this on the appellant's mind might have been comparatively small if he had not previously been in the hands of the political police for a similar alleged offence; but in view of his previous record with them such a suggestion must have caused him, and would have caused any reasonable person, extreme alarm. In the circumstances then obtaining it would have been a very brave, and indeed a very rash, man who would have resisted such a demand, not on a point of military duty or honour, but merely to safeguard his pocket. Moreover, it is not necessary for this purpose to rely only on the oral evidence of the appellant, since by a letter dated 19th November, 1943, the point was raised again. In one of his frequent demands for payment the Custodian's Liquidation Officer wrote "You are now requested to make every effort to settle your outstanding balance within this year, in co-operation with, and loyalty to the Nippon Military Administration." This letter is confirmatory of the oral evidence. It indicates the status of the Custodian as a component part of the Japanese war machine, and it indicates the kind of measure that the Custodian would have been prepared to take in cases of defiance to his instructions. I think that this is proof of the clearest kind that duress existed. I am satisfied that the appellant sold his other lands with the utmost reluctance and at a gross undervalue. I am satisfied that he would not have done so, had it not been that he was in genuine fear of consequences which involved his life or freedom, and I am satisfied that any reasonable man in the same circumstances might well have done precisely the same as he did, and for the same reasons.

As regards the matters which led the learned Judge to think that no more pressure was exerted by the Custodian than any other creditor might properly exert on his debtor, I think it is clear that the expressions used by the debtor of willingness to pay and willingness to sell his assets were merely the most ordinary example of what I may call "stalling". He did everything possible to put off the evil day. It is quite improper to suppose that because he said on paper that he was willing to pay, that must be taken as literally true. As regards the letter in which he thanked the Custodian for his courtesy, I think this was no more than making the best of a bad job and smoothing over the end of a situation, the dangers of which might still not have been wholly dissipated. At the time of payment the appellant was still apparently opposed to the Indian Independence League and it was by no means impossible that he might come again into conflict with the authorities in consequence of that. In case he did so, he would at least have wished that his record as regards these transactions should appear to the Japanese as satisfactory as possible. I see nothing in any way inconsistent with his general case in these expressions of thanks to the Custodian.

I have had the advantage of reading the judgment of the learned President and I agree with it. In the result I am of opinion that the appellant must succeed and that this appeal should be allowed. The application should have been dismissed and the respondents must pay the costs of this appeal and in the Court below. The deposit should be paid out to the appellant's Solicitor.

Appeal allowed.

PUBLIC PROSECUTOR v. JAAFAR SHAH & ANOR.

[App. Crim. Juris. (Briggs, J.) December 23, 1951]

[Alor Star — Criminal Appeal No. 53 of 1951]

Food Control Proclamation cl. 4 — Ration Documents Regulations, 1948, regs. 3 and 4 — Control sugar.*

The Food Controller allows a retailer of sugar to buy one extra katty of sugar for each picul of his theoretical controlled turnover so as to provide against losses in transit and packing.

Held, that the accumulated surplus is not controlled sugar and the retailer may dispose of it as an uncontrolled article.

* G. N. 66 of 19/2/48.

MAGISTRATE'S APPEAL.

F. G. Cooke for the Public Prosecutor.

Lim Kheng Kooi for the defendants.

The facts sufficiently appear from the judgment.

Cur. Adv. Vult.

Briggs, J. : — The first accused was charged with selling a katty of sugar at a price above the controlled price, and was acquitted. He was also charged with selling the same sugar to a person who had no ration card or other authority from the Food Controller to buy it and was convicted. The second accused was charged in related terms as being his employer and not having taken proper precautions to prevent the commission of the offences. He was acquitted on the first charge and convicted on the second. Each accused was fined $300 or two months simple imprisonment in default. The second accused, who stands in danger of losing a valuable licence, appealed against conviction. The prosecution cross-appealed against the two acquittals and on alleged inadequacy of both sentences.

The defence as regards the price depended on a contention that the purchaser of the sugar had been given a chit marked "63 cs." and representing an undertaking to give that amount of change out of a $1 note tendered, whenever small change should be available. The prosecution admitted that, if that chit was in fact given, the defence was valid, but contended that it was never given. The learned Deputy Public Prosecutor in a careful analysis of the evidence pointed to certain discrepancies, certain omissions and certain improbabilities, which the Court below had in his submission failed to observe. After giving full consideration to these I was of opinion that they were not of sufficient gravity or importance to justify any interference with the finding of the learned Magistrate that the chit had been given. That finding was based on ample evidence, some at least of which was apparently unbiassed and independent. I decline to disturb the finding of the Court below and the appeals against acquittal must therefore be dismissed.

The appeals against sentence turn on some very special facts. It is the practice of the Food Control Department to allow retailers of sugar to buy one extra katty of sugar for each picul of their theoretical controlled turnover. The object of this is to provide against losses in transit and in packaging. It is apparent that some small percentage must always be made available for this, since otherwise the retailer who encountered any such small loss would be unable correctly to supply his customers. The retailers have to account for their disposal of all controlled sugar, but not for the extra katty given with each picul. If, therefore, they keep their losses in transit and packing below 1%, they will in time accumulate a surplus of sugar which may be described as uncontrolled, in the sense that no one has a claim to buy it on a ration-book and the retailers do not have to account to the department for its sale or disposal. It is common ground that in this case the sugar sold came from a surplus of this kind in the hands of the vendors, and that their stocks and accounts of sugar, as relating to 100 katties per picul, but not 101, were in perfect order.

The first question is — what were the rights of the vendors as regards this surplus sugar? Could they lawfully sell it as unrationed sugar without production of a ration-book? If they could so sell it, could they sell it at a price above the controlled price? The last point, though it opens interesting possibilities, does not affect this case, since, in view of my dismissal of the appeals against acquittal, it must be accepted that the sale was made at the controlled price.

The penalties provided for unlawful sales are very heavy. If this had been a case of unlawful purchase of the sugar followed by sales without production of ration-books, or if the sale had been made at an unlawfully high price, it would have been proper to impose much heavier sentences. I think, however, that, assuming lawful possession of the sugar by the vendor and a sale at a lawful price, the offences, if they were offences, were of an unusually mild nature. I believe the first accused thought he was not entitled in law to sell this sugar, but even if he was right he was adequately punished in the special circumstances, and I think the learned Deputy finally conceded the point. The appeals against sentence are therefore also dismissed.

The second accused's appeal against conviction was brought on the footing that an offence had been committed by the first accused, but that he (the appellant) had taken all proper precautions to prevent it. I was not impressed by this part of his case, but it is not now material. During the argument he amended his grounds by leave, so as to contend that no offence had been committed by the first accused, and therefore he himself could not be guilty. This revives the question whether this particular sugar could lawfully be sold as it was. The matter appears to turn on regulations 3 and 4 of the *Ration Documents Regulations*, 1948. Their effect is to require the use of a ration-book by the purchaser whenever a retailer sells sugar, but subject to important exceptions which are, under regulation 3, "Except under the authority of the Food Controller . . . ." and, under regulation 4,

"Except where the Food Controller shall otherwise authorize . . . .". The Food Controller can therefore give a complete dispensation from all normal rationing rules. This is entirely consonant with clause 4 of the Food Control Proclamation, under which the Regulations are made.

It is contended for the accused that, by allowing retailers to purchase the 1% allowance and not requiring them to account in any way for such surplus as may remain after satisfying transit and packaging losses, the Controller has in effect decontrolled sugar to the extent of any such surplus, and in the absence of any directions from him how it shall be disposed of, it must be assumed that the owner can dispose of it in any way he wishes. He cannot *ex hypothesi* sell it as rationed, for it is surplus to rationing requirements. Must he then destroy or personally consume it? The learned Deputy contends that he ought to report the position to the Deparment and hold the sugar at their disposal, but *non constat* that they desire that, and it seems improbable that they would wish to repurchase it. In any event, he continues, whatever else the retailer may do, he must not sell it. I asked if he could give it away, and the learned Deputy at first conceded that he could, though I think he later receded from that. If the Regulations had dealt only with sales of sugar, I could appreciate that distinction, but they do not; they deal with "obtaining" and "supplying" and "offering". I cannot see that a gift is any more permissible than a sale. They stand or fall side by side.

There is the further point that, in creating rights in the retailer to dispose in some way or other of this sugar, the Controller is in the position of a grantor, whose implied grant the Court has to construe as best it can. Such a grant is to be read in favour of the grantee rather than the grantor if in writing. If it is implied from circumstances and the grantor contends that it is subject to a reservation or proviso, it is for him to establish that. As I find it impossible to understand the nature or extent of the alleged reservation or proviso, I am driven to conclude that there was none. It would have been easy for the Controller to say "You may have this 1% allowance, but must not sell it," but he has not done so. In distributing it as an uncontrolled article, I think he has given implied authority, within the meaning of the Regulations, to the retailer to "offer" and "supply" and to the public to "obtain" it, in such manner otherwise lawful as they may wish. Although the second accused certainly, and the first accused probably, thought the first accused had sold unlawfully, they were wrong. The sale was a lawful sale and the second accused's appeal must be allowed and the conviction set aside. The conviction of the first accused having been erroneous for the reasons given, I deal with his case under revisionary powers and his conviction also is set aside. The fines will be refunded.

Order accordingly.

SALLEH BIN HAJI SAHID v. ISMAIL BIN HAMID & ANOR.

[Orig. Civ. Juris. (Spenser Wilkinson, J.)
January 16, 1952]

[Penang — Civil Suit No. 106 of 1951]

Limitation Ordinance, arts. 104 and 112, s. 25 — Limitation (Enemy Occupation) Ordinance, 1946 — Mortgage — Death of mortgagor — Non-payment of interest — Mortgagee exercising power of sale.

In this case the 1st defendant's father owned a piece of land in Province Wellesley. On the 25th June 1929, i.e., about a year before his death, he mortgaged the land to a Chettiar to secure repayment of the sum of $100/- with interest thereon at the rate of 2% per month payable monthly. The repayment date in the Mortgage Deed was 25th June 1930. The mortgagor died on the 6th May 1930 and no interest was paid on the mortgage since his death. The 1st defendant, who during his father's lifetime had been working on the land with him, continued to work thereon after his father's death and there was no doubt that he remained in possession of the land from the date of his father's death until the 20th January 1950. He purported to sell the land to the 2nd defendant but in the meantime, on the 6th of February 1950, the personal representative of the deceased chettiar mortgagee sold the land under the power of sale by public auction to the plaintiff and the plaintiff claimed possession of the land in this suit. The defendants pleaded limitation.

Held, that the purchaser from the mortgagee exercising his power of sale acquires a new title and limitation runs anew from this date against him.

Cases referred to :—

(1) *In re Marie Louise Caunter, deceased* (1938) M.L.J. 174.

(2) *Pugh v. Heath* 6 Q.B.D. at p. 357; (1881-82) 7 A.C. 235.

CIVIL SUIT.

Sonni Pillai for the plaintiff.

Lim Kheng Kooi for the defendants.

Cur. Adv. Vult.

Spenser Wilkinson, J. : — The facts in this case are not in dispute. The 1st defendant's father owned a piece of land in Province Wellesley. On the 25th June, 1929, that is about a year before his death, he mortgaged the land to a Chettiar to secure repayment of the sum of $100 with interest thereon at the rate of 2% per month payable monthly. The repayment date